

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of)	Case No. 06-O-14289-LMA
)	
WILLIAM MAYA)	DECISION
)	
Member No. 109571,)	
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this default matter, respondent William Maya is charged with four counts of professional misconduct. The court finds, by clear and convincing evidence, that respondent is culpable of all of the charged acts of misconduct, which consist of: failing to perform legal services competently; failing to respond to client inquiries and to inform a client of significant developments in the case; failing to release the client file to the client promptly upon request at the termination of employment; and failing to cooperate in a State Bar investigation.

In view of respondent's misconduct in this matter, considered in conjunction with the mitigating and aggravating circumstances, the court recommends that respondent be disbarred.

II. Pertinent Procedural History

On May 1, 2007, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) sent a 20-day letter to respondent at his State Bar official membership records address (official address); respondent did not respond to the letter.¹

On May 25, 2007, the State Bar sent to respondent, but did not file, a copy of its four-count Notice of Disciplinary Charges (NDC) in this matter. The NDC was sent to respondent at

¹Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of all respondent's official membership records addresses to the date of the filing of this decision.

his official address by certified mail, return receipt requested. On May 29, 2007, the State Bar filed and served the NDC on respondent at his official address by certified mail, return receipt requested. On June 8 and July 9, 2007, the State Bar received the return receipts. They were filled out and signed by respondent.

On May 30, 2007, the court filed and served a Notice of Assignment and Notice of Initial Status Conference.² The initial status conference was calendared for July 9, 2007.³ At that status conference, respondent failed to appear in person or through counsel, and the court ordered the State Bar to submit a motion for entry of default within 10 days.⁴

On July 9, 2007, State Bar Investigator Bill Stephens and Deputy Trial Counsel Maria J. Oropeza (DTC Oropeza) spoke with respondent on the telephone. Respondent confirmed that he had received the NDC and informed Investigator Stephens that his official address was the same place as his apartment at 1846 Parkside in Concord, CA. DTC Oropeza informed respondent that he needed to file a response to the NDC prior to July 19, 2007. That same day, the State Bar sent respondent three courtesy copies of the NDC along with a letter setting forth the status of the matter. The courtesy copies were sent to respondent's official address, his Parkside address, and the official address he had immediately prior to the current official address. None of the courtesy copies were returned by the United States Postal Service (USPS).

On July 19, 2007, the State Bar filed a motion for entry of respondent's default. This motion was served on respondent at his official address by certified mail, return receipt requested. On the same date, respondent filed a response to the NDC and a letter apologizing to the court for not attending the July 9, 2007, status conference.

²This notice and all other documents sent to respondent by the court, except for the order entering respondent's default, were sent to respondent at his official address by first-class mail, postage fully prepaid. The order entering default was sent to respondent at his official address by certified mail, return receipt requested.

³On June 20, 2007, the instant matter was reassigned to this court.

⁴A Status Conference Order was filed and served on July 9, 2007. After each proceeding in the State Bar Court, an order detailing the proceedings was filed and served on the parties.

On July 20, 2007, the court filed and served a notice setting a status conference for July 30. On that date, respondent appeared, and the matter was set for settlement conference on August 23, for further status conference on August 27, and for trial on December 10, 2007.

On August 17, 2007, a notice was filed and served changing the settlement conference to August 22, 2007. On August 22, respondent appeared and requested referral to the Alternative Discipline Program (ADP). The case was referred pursuant to rule 801(a) of the Rules of Procedure of the State Bar of California.

On August 27, 2007, the matter was set for further status conference on September 17, 2007.

At the status conference on September 17, 2007, respondent failed to appear. A further status conference was set for October 1, 2007, at which respondent was ordered to appear in person. In a letter to the court dated September 20, 2007, respondent apologized for not attending the September 17 status conference and requested that it be rescheduled.

At the October 1 status conference, respondent again failed to appear. The court set the matter for further status conference on October 15, 2007, and ordered that respondent appear in person on that date or be deemed ineligible for ADP.

On October 15, 2007, respondent again failed to appear. The court found respondent not eligible for ADP due to his failure to appear on October 1 and 15 and set a further status conference for October 29, 2007.

On October 29, 2007, respondent failed to appear yet again. The court set a settlement conference for November 15, 2007, a telephonic status conference for November 26, 2007, and an in-person pretrial conference for December 3, 2007. The Status Conference Order served on respondent was returned to the court marked "Returned to Sender Box closed - No order."

Respondent failed to appear for the settlement conference on November 15, 2007, although the Order re Settlement Conference indicates that a message was left for respondent the night before reminding him of the conference. The copy of the Order re Settlement Conference served on respondent was returned to the court marked "Returned to Sender Box closed - No

order.” When respondent again failed to appear for a status conference on November 26, 2007, the court vacated the trial date, the pretrial statement date, and the pretrial conference date.

On November 26, 2007, the court filed and served an Order to Show Cause (OSC), ordering respondent to appear on January 7, 2008, and to file a response to the OSC on or before December 17, 2007, to show why his response to the NDC should not be stricken and his default entered. The OSC noted that respondent had failed to appear in court on numerous occasions for scheduled status and settlement conferences, failed to comply with certain LAP requirements, eventually discontinued all contact with LAP, and failed to attend his deposition on November 20, 2007. The OSC served on respondent was returned to the court marked “Returned to Sender Box closed - No order.”

Because respondent failed to file a response to the OSC and failed to appear on January 7, 2008, on January 8, 2008, the court ordered the response to the NDC stricken, entered respondent’s default, and ordered that respondent be involuntarily enrolled as an inactive member under Business and Professions Code section 6007, subdivision (e),⁵ effective seven days after service of the court’s order. On January 28, 2008, the court received from the USPS the copy of the order served on respondent by certified mail, return receipt requested, marked “Returned to Sender Not Deliverable as addressed - Unable to Forward.” In addition, on January 30, 2007, the court received a return receipt from the same copy of the order served on respondent. This return receipt contained a signature that does not appear to be that of respondent, and the return receipt does not indicate that it was signed by an agent of respondent’s.⁶

The court took this matter under submission on January 25, 2008, after the State Bar filed

⁵All further statutory references are to the Business and Professions Code unless otherwise indicated.

⁶Although it is unclear why the court received both the returned certified mail and the signed return receipt, it appears that respondent did not receive the mail, either himself or through an agent.

its brief on culpability and discipline and requested waiver of a hearing in this matter.⁷

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 12, 1983, and has been a member of the State Bar of California at all times since that date.

B. Facts: Counts One and Two

On May 21, 2000, a dog attacked and injured Jeffrey Brandon (Brandon) and his son, Jason. In May 2000, Brandon hired respondent to represent him and his son in a personal injury matter against the dog's owners and signed a contingency fee agreement with respondent. Respondent filed a complaint on behalf of Jeffrey and Jason Brandon on September 7, 2001. On September 22, 2001, the defendants' insurance company issued a check to Jason Brandon in the amount of \$2,500 in settlement of his personal injury claim, and respondent cashed the check.

On December 14, 2001, respondent served the complaint; the defendants filed an answer on December 13, 2001.⁸ On December 24, 2001, respondent filed a request for dismissal as to Jason Brandon only, due to the settlement as to that claim. On January 24, 2002, the court dismissed the suit, and the minute order specified "Dismissal of Entire Action filed - Hearing Vacated." Respondent received notice of the dismissal and served notice of dismissal (of Jason Brandon only) on defendants' counsel, Attorney Sandra O'Brien Miller (Miller).

On February 11, 2002, Brandon met with respondent and attended his own deposition,

⁷Attachment one to the State Bar's brief on culpability and discipline is a certified copy of documents from one of respondent's prior disciplinary cases; the court notes that no certification is provided with attachment two. Pursuant to Evidence Code section 452, subdivision (h), however, the court takes judicial notice of respondent's prior record of discipline.

⁸The record does not establish why the answer was filed before the complaint was served.

and subsequently reviewed and returned to respondent a copy of his deposition transcript. In the fall of 2002, Brandon received discovery-related documents from respondent, filled them out, and returned them to respondent. Thereafter, Brandon called respondent and left voice mails for him every other month but received no response.

On July 15, 2003, Miller served respondent with a Request for Identification, Production, and Inspection of Documents at the address that was then his official address, which address respondent had identified on his pleadings in the lawsuit. Respondent received the discovery request and was aware of its contents.

On August 23, 2003, Miller wrote respondent about his failure to respond to discovery and other pretrial issues. Respondent received the letter and was aware of its contents. However, respondent failed to respond to the letter or otherwise respond to discovery requests.

On September 10, 2003, Miller filed a Motion to Compel Plaintiff's Response to Request for Production of Documents. The hearing was set for October 20, 2003. Miller served the motion to compel containing the hearing date, time, and location, and respondent received the motion and was aware of its contents. However, respondent failed to respond to the motion or to the discovery requests and failed to appear at the hearing. The court granted the motion, ordered respondent to appear within 15 days from service of the court's order, and ordered respondent to pay \$286.30 in attorney fees and costs.

Near the end of 2003 or beginning of 2004, Brandon received information that respondent had moved. Brandon obtained respondent's home telephone number and left a message for respondent there. In respondent's return message, he stated that he would check with opposing counsel and get back to Brandon; he also advised Brandon of his new address. Thereafter, respondent did not get back to Brandon or apprise Brandon of the status of his case.

At the end of 2004, Brandon again called respondent, advised him of Brandon's new address in Arizona, and requested a status update. Brandon reached respondent in early 2005, and respondent stated he would confer with opposing counsel and get back to Brandon the following Saturday. Respondent did not get back to Brandon as promised.

On April 25, 2005, Miller filed a motion for judgment on the pleadings. Hearing on the motion was set for June 7, 2005. The hearing date, time, and location were noted on the pleadings, and respondent received the motion. The motion was based on a claim that the cause of action was barred by the applicable statute of limitations. Although respondent had previously stated in a declaration filed on November 29, 2001, in response to an OSC, that the insurance carrier had waived the statute of limitations pending settlement negotiations, respondent failed to make that argument, to respond to the motion, or to appear at the hearing. On June 7, 2005, the court granted the motion, and on June 28, 2005, (filed July 20, 2005,) entered an Order for Judgment on the Pleadings. On July 25, 2005, Miller served a notice of entry of the order on respondent at the address that was his official address at the time. Respondent received this notice and was aware of its contents.

Respondent did not advise Brandon of the motion to compel, the motion for judgment on the pleadings, or the dismissal of the case.

Count One: Rules of Professional Conduct, rule 3-110(A)⁹

The State Bar proved by clear and convincing evidence that respondent willfully violated rule 3-110(A). That rule provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. By failing to respond to discovery; failing to pursue the case; and failing to respond to the defendants' motions to compel and for judgment on the pleadings, resulting in discovery sanctions and dismissal of the case, respondent repeatedly failed to perform legal services with competence.

Count Two: Section 6068, Subdivision (m)

The State Bar proved by clear and convincing evidence that respondent willfully violated section 6068, subdivision (m). That section provides that it is an attorney's duty to respond promptly to reasonable client status inquiries and to keep clients reasonably informed of significant developments in the matters with regard to which the attorney is providing legal

⁹Unless otherwise indicated, all further references to rules are to the Rules of Professional Conduct of the State Bar of California.

services. By failing to respond to Brandon's repeated requests for information on the case, respondent failed to respond promptly to his client's reasonable status inquiries. In addition, by failing to inform Brandon of the motion to compel, the motion for judgment on the pleadings, and the dismissal of the case, respondent failed to keep Brandon reasonably informed of significant developments in his case, thereby willfully violating section 6068, subdivision (m).

C. Facts: Count Three

On December 4, 2006, Brandon wrote to respondent and requested the return of his file. Brandon sent the letter by USPS, postage prepaid, to the address which was respondent's official address at the time. Respondent received the letter but failed to respond or to return Brandon's file to him.

Count Three: Rule 3-700(D)(1)

The State Bar proved by clear and convincing evidence that respondent willfully violated rule 3-700(D)(1). That rule requires an attorney whose employment has terminated to release all client papers and property to the client promptly upon the client's request. By failing to release Brandon's file to him promptly upon Brandon's request, respondent failed to return all client papers and property, in willful violation of rule 3-700(D)(1).

D. Facts: Count Four

On March 28, 2006, Brandon complained to the State Bar regarding respondent's conduct.

On May 1, 2006, and September 5, 2006, State Bar Complaint Analyst Edward C. Williams wrote to respondent at his official address at the time regarding the complaint. Respondent received the letters, and on September 29 and October 2, 2006, respondent faxed requests to Williams for additional time to respond. However, respondent never sent additional information.

On March 9, 2007, State Bar Investigator Michael Maacks wrote to respondent at his official address at the time regarding the complaint. Respondent received the letter and on March 23, 2007, faxed to Maacks a request for a two-week extension of time to respond.

Maacks replied, granting the two-week extension, but respondent thereafter failed to respond.

Count Four: Section 6068, subdivision (i)

The State Bar proved by clear and convincing evidence that respondent willfully violated section 6068, subdivision (i). That section provides that it is an attorney's duty to cooperate and participate in a State Bar disciplinary investigation or proceeding. By failing to respond to the letters sent by Williams and Maacks, and by not providing the State Bar with a response to the allegations of misconduct that the State Bar was investigating, respondent willfully violated section 6068, subdivision (i),

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating factors were submitted into evidence, and none can be gleaned from this record. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)¹⁰

B. Aggravation

Respondent has two prior records of discipline. (Std. 1.2(b)(i).)

In the first prior disciplinary matter, effective September 21, 1990, respondent received a two-year stayed suspension, a two-year probation, and a six-month actual suspension and until specified restitution. In that matter, respondent failed to respond to reasonable client status inquiries, withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to a client, failed to refund unearned fees, failed to perform legal services competently, committed acts of moral turpitude, and failed to cooperate and participate in State Bar investigations. In aggravation, respondent engaged in multiple acts of wrongdoing, the misconduct was surrounded or followed by dishonesty, the misconduct significantly harmed a client, respondent demonstrated indifference toward rectification or atonement, and respondent failed to cooperate with the State Bar. The court also considered respondent's lack of a prior

¹⁰All further references to standards are to this source.

record of discipline.

In the second prior disciplinary matter, effective May 15, 1992, respondent received a one-year stayed suspension and a two-year probation due to his failure to comply with California Rules of Court, rule 9.20 (then numbered as rule 955) as he had been ordered to do in his earlier disciplinary case. In mitigation, no clients were harmed, respondent had suffered from emotional difficulties that were currently being treated, and respondent took objective steps demonstrating remorse and recognition of wrongdoing. The court considered respondent's prior record of discipline in aggravation.

The facts in this case establish that respondent committed multiple acts of misconduct. (Std. 1.2(b)(ii).)

Respondent caused significant harm to his client in that Brandon's personal injury case was dismissed. (Std. 1.2(b)(iv).)

Respondent's failure to consistently participate in this disciplinary matter prior to the entry of his default is also an aggravating circumstance. (Std. 1.2(b)(vi).)

V. Discussion

The purpose of disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; std. 1.3.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) While the standards are not binding, they are entitled to significant weight. (*In re Silvertown* (2005) 36 Cal.4th 81, 92.)

In this case, the standards provide for the discipline ranging from reproof to disbarment. (Stds. 2.4(b), 2.6(a), 2.10.) Standard 1.6, subdivision (b), adds that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions. Further, standard 1.7(b) provides that if an attorney found culpable of professional misconduct in a disciplinary

proceeding has a record of two prior impositions of discipline, the degree of discipline imposed in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

The State Bar recommends disbarment, citing *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829. Shalant was disbarred after he was found culpable of (1) committing an act involving moral turpitude and (2) agreeing to, charging, and collecting an illegal fee, and he had four prior impositions of discipline, making that case very serious. In contrast, the nature of respondent's misconduct is somewhat less serious, and he has only two prior impositions of discipline. Nevertheless, the court determines that other factors render this case as serious as *Shalant*.

Respondent has been found culpable in this matter of failing to perform legal services competently; failing to respond to client inquiries and to inform a client of significant developments in the case; failing to release a client file promptly upon request at the termination of employment; and failing to cooperate in a State Bar investigation. Of particular concern to this court is respondent's failure to fully participate in this disciplinary proceeding, especially considering that respondent participated sporadically and was fully aware of this proceeding. Failing to appear and participate shows that respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) His failure to participate in this proceeding leaves the court without any understanding as to the underlying cause or causes for respondent's misconduct or, significantly, from learning of any mitigating circumstances that might justify this court's departure from the discipline recommended by the standards. Moreover, this is respondent's third disciplinary proceeding, and the two prior impositions of discipline have apparently failed to make respondent aware of his duties as an attorney, duties both to his clients and to the State Bar.

Therefore, considering the nature of respondent's misconduct, the aggravating circumstances, the State Bar's discipline recommendation, and the standards, the court

recommends that respondent be disbarred.

VI. Recommended Discipline

Accordingly, the court hereby recommends that respondent William Maya be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.¹¹

VII. Costs

The court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in section 6140.7 and as a money judgment.

VIII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: April __, 2008

LUCY ARMENDARIZ

Judge of the State Bar Court

¹¹Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)